

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/18/2010 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8-11, 13, 16 and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhoff (U.S. 5,669,914) in view of Rehder (U.S. 4,865,606).

Eckhoff discloses a device (see fig 1 below) for dynamic tensioning of a natural or prosthetic knee joint, with or without a tibial cut being carried out, of the type comprising at least one femoral insert (fig 1, 40) which has a condyle support surface for a femoral implant or bone; at least one tibial insert (fig 1, 60) which has a support surface for a tibial plate for a tibial implant or bone; and means (fig 1, 82) for applying, between the femoral and tibial inserts, a distraction force of a predetermined strength, with or without the kneecap being in position, characterized in that it is constructed so as to allow rotation of the joint and comprises means for maintaining the knee in a state

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of tension during rotation (col. 3, ll. 63-65), and thus carrying out measurements for various angles of rotation. The device is provided for the inner and outer compartment of the knee (fig 1). The device includes means for measuring the spacing of the surfaces and the distraction force (fig 4, 89 and col. 9, ll. 28-35). The means for applying the distraction force comprises a force generation unit (fig 1, 82) and a pair of branches (fig 1, 44).

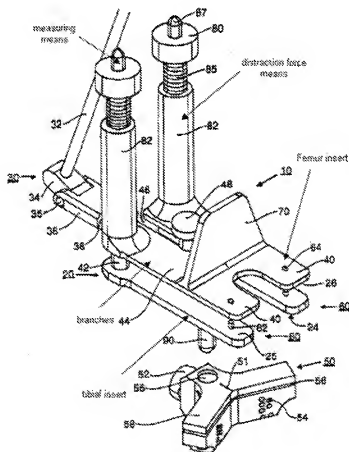
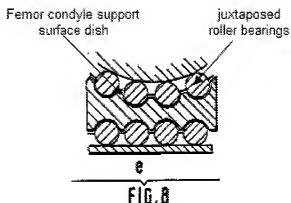


FIG. 1

Eckhoff discloses the claimed invention except for a sliding means for the femoral implant or bone when the knee joint is displaced comprising juxtaposed rollers, and the condyle surface is in the form of a dish.

Rehder discloses a sliding means for the femoral implant or bone when the knee joint is displaced, comprising juxtaposed rollers (fig 8e top surface) to allow for pure rotational movement of the knee (col. 3, ll. 22-30).

Rehder also discloses the condyle surface is in the form of a dish (fig 8e and col. 7, ll. 7-9) to prevent lifting (col. 7, ll. 7-10).



It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the device of Eckhoff with a sliding means for the femoral implant or bone when the knee joint is displaced comprising juxtaposed rollers, and the condyle surface is in the form of a dish in view of Rehder in order to allow for pure rotational movement of the knee and to prevent lifting.

As to claim 20, Rehder discloses the claimed invention except for the maximum thickness of the inserts is less than or equal to 2.5mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made for the maximum

thickness of the inserts is less than or equal to 2.5mm since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

Applicant's arguments, see Remarks, filed 5/18/2010, with respect to U.S.C. 112 rejection of claim 23 have been fully considered and are persuasive. The U.S.C. 112 rejection of claim 23 has been withdrawn.

Applicant's arguments with respect to U.S.C. 101 rejection of claims 21-28 have been fully considered and are persuasive. The U.S.C. 101 rejection of claims 21-28 has been withdrawn.

Applicant's arguments filed 5/18/2010 have been fully considered but they are not persuasive. The applicant argues that Rehder cannot be combined with Eckhoff because modifying Eckhoff would render it unsatisfactory for its intended purpose stating that the ledge 70 of Eckhoff is intended to prevent rotational movement. The examiner respectfully disagrees. Column 5 lines 39-54 of Eckhoff state the use of the ledge is contrary to the applicant's statement. It reads; "in a preferred embodiment, the femoral component comprises **a ledge** at approximately right angles to the femoral leaves, and projecting upward at a distance from the end of the leaves sufficient to allow the ledge to rest against a flattened anterior distal femoral surface while the leaves project inside the joint space. This helps to stabilize the device against the knee while the alignment procedure is conducted. The femoral ledge preferably has a surface of at least about 8 square cm and more preferably between about 9 square cm and about 20

square cm. **The placement of the ledge ensures that the leaves will not project too far within the joint space so as to allow rotation of the jig relative to the femur.**"

(The jig is reference to the whole device (col. 3, ll. 30-32)) Therefor the ledge is intended promote rotation and not inhibit it. Therefor Eckhoff does not teach away rotation of the femur but the device is designed to aid in rotation. The addition of the features of Rehder would not make the device unsatisfactory for its intended use but aid in further allowing rotation of the jig relative to the femur.

The rejection is deemed proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. COTRONEO whose telephone number is (571)270-7388. The examiner can normally be reached on M-F 730-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. J. C./
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733